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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

(HONORABLE IRMA E. GONZALEZ)

UNITED STATES OF AMERICA, Plaintiff, vs. Ernest Guerrero, Defendant	Date: August 4th, 2008 Time: 2: 30 A.M. Case No.: 08cr2034-IEG **Objection to Release of Material Witness**

TO: Karen Hewitt, United States Attorney for the District of Arizona and Steve Miller, Assistant United States Attorney and Wayne Mayer, Attorney for Material Witness Jose Gonzaga

I.

STATEMENT OF FACTS

On June 23rd, 2008, counsel for material witness Jose Gonzaga filed a motion to compel a video taped deposition because the witness is unable to secure a release via bond. Counsel indicated in his motion that Mr. Gonzaga is unable to secure his release because he has no friends or family willing to sign for his bond. At the deposition, Mr. Gonzaga testified that, in fact, he haw a relative in the San Diego area. The declaration signed by the petitioner states, “He indicated to me he has no family or friends in the United States that could assist the witness (sic) in posting a material witness bonds.” Declaration of Attorney Wayne C. Mayer in Support of Material Witness Jose Guadalupe Gonzaga Ceja’s Motion for Videotaped Deposition. Specifically, the material witness testified at the deposition that he has a brother, Omar, in the San Diego area.

Mr. Guerrero previously requested that the deposition be delayed so that the possibility of obtaining a bond for Mr. Guerrero might better be explored.

The testimony at the deposition revealed that the material witness lived for at least a year and a half in the United States, and that he has been apprehended multiple times attempting to enter illegally.

II.

The Request for Order to Release the Material Witness Should Be Denied Because There Has Been No Showing of the Unavailability of Witness

If the material witness does have substantial ties in the San Diego area, he might be eligible to be released on bond or on his own recognizance. Conditions for release of material witnesses are governed by 18 U.S.C. sec. 3142. Under this section, “[t]he judicial officer shall order the pretrial release of the person on personal recognizance, or upon execution of an unsecured personal appearance bond… unless the judicial officer determines that such release will not reasonably assure the appearance of the person as required.” 18 U.S.C. sec. 3142(b)(2004). Clearly, sec. 3142(b) suggests that this Court can order that the material witness can be released on his own recognizance. Since he has family in the area, he may be able to bond out.

The Bail Reform Act also states that, “[t]he judicial officer may not impose a financial condition that results in the pretrial detention of the person.” 18 U.S.C. sec. 3142(c)(2)(2004). This mandate, combined with the preference for release upon one’s own recognizance, strongly suggests that the proper remedy for release for the material witness in this case is a motion to modify conditions of release, to allow him bail. It would not prejudice the material witness to allow additional time for such a motion.

Because of the prejudice to Mr. Guerrero’s Sixth Amendment Right, would be inappropriately premature, and would fail to meet the underlying procedural requirements - including the unavailability of witnesses - the order to release the material witness should be denied.

III.

CONCLUSION

For the foregoing reasons, Mr. Guerrero respectfully requests that this Court not order the witness released, but also to order the government to provide discovery on the material witnesses' multiple prior apprehensions as well as a list of aliases.

Respectfully Submitted,

/s Scott Pactor

Dated: July 28th, 2008

Scott Pactor
Attorney for
Ernest Guerrero

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UNITED STATES DISTRICT COURT

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(**HONORABLE IRMA E. GONZALEZ)**

UNITED STATES OF AMERICA,	)	Date: August 4th, 2008
Plaintiff,	)	Time: 2: 00 P.M.
vs.	)	Case No.: 08cr2034-IEG
	)	
Ernest Guerrero,	)	**Declaration of Counsel**
Defendant	)	

I, Scott Pactor, declare:

I am the attorney appointed to represent defendant Ernest Guerrero in this matter.

I attended the Motion for Videotaped Deposition of Material Witness, held on July 28th, 2008. I am continuing investigation into several of the statements made by the witness at the deposition which are relevant to the basis upon which the deposition was ordered. I expect that his investigation will be complete within the week.

I make this declaration under penalty of perjury and the laws of the United States and California.

Dated: July 28th, 2008

/s_Scott Pactor
Scott Pactor
Attorney for
Ernest Guerrero

CERTIFICATE OF SERVICE

I, Scott Pactor, hereby certify to the best of my information and belief that by having e-filed the "OBJECTION TO ORDER TO RELEASE MATERIAL WITNESS" I have caused a copy of each to have been served via electronic mail upon the following:

Victor_Pippins@fd.org (Victor Pippens), Efile.dkt.gc2@usdoj.gov (Michelle Petit), Wayne Mayer (efiling), Jose Tafolla for Wayne Mayer fax: (619)286-7680.

DATED: 7/28/08

Respectfully Submitted,

/s Scott Pactor
Scott Pactor
Attorney for
Ernest Guerrero